

CUSTOMER NO.: 24498
Serial No.: 09/868,426
Notice of Appeal filed: 03/18/09
Date of Appeal Brief: 05/15/09

PATENT
RCA 89,186

IN THE UNITED STATES PATENT & TRADEMARK OFFICE
Before the Board of Patent Appeals & Interferences

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MAY 15 2009

Appellants: Hugh B. Morrison et al.
Serial Number: 09/868,426
Atty. Dkt: RCA 89,186
Filing Date: June 15, 2001
For: METHOD FOR OPERATING A VIDEO PROCESSING
APPARATUS VIA AN ELECTRONIC MAIL MESSAGE
Art Unit: 2421
Examiner: Dominic D. Saltarelli

APPEAL BRIEF

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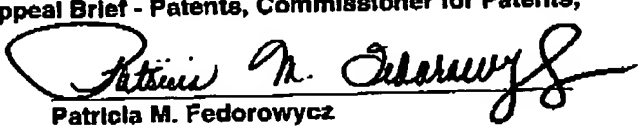
In response to the Final Office Action dated December 18, 2008, and further to the Notice of Appeal filed on March 18, 2009, Appellants hereby submit an Appeal Brief in accordance with 37 C.F.R. §41.37 for the above-referenced application.

TOTAL PAGES: 21

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I. Real Party in Interest

The real party in interest is Thomson Licensing LLC.

II. Related Appeals and Interferences

There are no prior or pending appeals, interferences, or judicial proceedings known to Appellants, the Appellants' legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. Status of Claims

Claims 10-29 are pending in this application, and are rejected. Claims 1-9 are cancelled. The rejection of claims 10-29 is being appealed.

IV. Status of Amendments

No amendment subsequent to the final rejection of December 18, 2008 has been filed.

V. Summary of Claimed Subject Matter

Independent claim 10 defines a method for operating a video processing apparatus, comprising steps of: receiving an electronic mail message remotely from a user (page 6, lines 1-3; step 302 of FIG. 3), said electronic mail message (element 500 of FIG. 5) comprising an operating command (element 506 of FIG. 5) and program identification information including at least one of a first type of program identification information and a second type of program identification information (page 8, lines 15-28; element 508 of FIG. 5); processing said electronic mail message to determine whether said electronic mail message includes said first type of program identification information (page 6, lines 9-10; step 314 of FIG. 3); scheduling an event responsive to said operating command for a program identified by said program identification information without searching program guide information for said program if said electronic mail message includes said first type of program identification information

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(page 6, lines 9-12; "YES" branch of step 314 proceeding to step 316, and thereby avoiding step 324 of FIG. 3); continuing to process said electronic mail message to determine whether said electronic mail message includes said second type of program identification information only if said electronic mail message does not include said first type of program identification information (page 6, lines 13-15; "NO" branch of step 314 proceeding to step 320 of FIG. 3); searching said program guide information for said program using said program identification information only if said electronic mail message includes said second type of program identification information and does not include said first type of program identification information (page 6, lines 17-19; "YES" branch of step 320 proceeding to step 324 of FIG. 3); and scheduling said event responsive to said operating command if said program is found during said searching step (page 6, lines 21-23; step 316 of FIG. 3).

Independent claim 17 defines an apparatus (FIG. 1), comprising: first means (element 1113 of FIG. 1) for receiving an electronic mail message remotely from a user (page 6, lines 1-3; step 302 of FIG. 3), said electronic mail message (element 500 of FIG. 5) comprising an operating command (element 506 of FIG. 5) and program identification information including at least one of a first type of program identification information and a second type of program identification information (page 8, lines 15-28; element 508 of FIG. 5); second means (element 1110 of FIG. 1; page 5, lines 22-23) for processing said electronic mail message to determine whether said electronic mail message includes said first type of program identification information (page 6, lines 9-10; step 314 of FIG. 3), and for scheduling an event responsive to said operating command for a program identified by said program identification information without searching program guide information for said program if said electronic mail message includes said first type of program identification information (page 6, lines 9-12; "YES" branch of step 314 proceeding to step 316, and thereby avoiding step 324 of FIG. 3); said second means (element 1110 of FIG. 1; page 5, lines 22-23) continuing to process said electronic mail message to determine whether said electronic mail message includes said second type of program identification information only if said electronic mail message does not include said first type of program identification information

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(page 6, lines 13-15; "NO" branch of step 314 proceeding to step 320 of FIG. 3); and said second means (element 1110 of FIG. 1; page 5, lines 22-23) searching said program guide information for said program using said program identification information only if said electronic mail message includes said second type of program identification information and does not include said first type of program identification information (page 6, lines 17-19; "YES" branch of step 320 proceeding to step 324 of FIG. 3), and scheduling said event responsive to said operating command if said program is found during said searching (page 6, lines 21-23; step 316 of FIG. 3).

Independent claim 24 defines a video processing apparatus (FIG. 1), comprising: an interface (element 1113 of FIG. 1) operative to receive an electronic mail message remotely from a user (page 6, lines 1-3; step 302 of FIG. 3), said electronic mail message (element 500 of FIG. 5) comprising an operating command (element 506 of FIG. 5) and program identification information including at least one of a first type of program identification information and a second type of program identification information (page 8, lines 15-28; element 508 of FIG. 5); a processor (element 1110 of FIG. 1; page 5, lines 22-23) operative to process said electronic mail message to determine whether said electronic mail message includes said first type of program identification information (page 6, lines 9-10; step 314 of FIG. 3), and to schedule an event responsive to said operating command for a program identified by said program identification information without searching program guide information for said program if said electronic mail message includes said first type of program identification information (page 6, lines 9-12; "YES" branch of step 314 proceeding to step 316, and thereby avoiding step 324 of FIG. 3); said processor (element 1110 of FIG. 1; page 5, lines 22-23) continuing to process said electronic mail message to determine whether said electronic mail message includes said second type of program identification information only if said electronic mail message does not include said first type of program identification information (page 6, lines 13-15; "NO" branch of step 314 proceeding to step 320 of FIG. 3); and said processor (element 1110 of FIG. 1; page 5, lines 22-23) searching said program guide information for said program using said program identification information only if said electronic mail message includes said

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second type of program identification information and does not includes said first type of program identification information (page 6, lines 17-19; "YES" branch of step 320 proceeding to step 324 of FIG. 3), and scheduling said event responsive to said operating command if said program is found during said searching (page 6, lines 21-23; step 316 of FIG. 3).

VI. Ground of Rejection to be Reviewed on Appeal

The rejection of claims 10-29 under 35 U.S.C. §103(a) based on U.S. Patent No. 6,374,406 issued to Hirata (hereinafter, "Hirata") in view of WO 99/35847 (hereinafter, "Westlake"), and further in view of U.S. Patent No. 5,375,235 issued to Berry et al. (hereinafter, "Berry") is presented for review in this appeal.

VII. Argument

The rejection of claims 10-29 under 35 U.S.C. §103(a) based on the proposed combination of Hirata, Westlake and Berry should be reversed for at least the following reasons.

Appellants first note that independent claim 10 recites:

"receiving an electronic mail message remotely from a user, said electronic mail message comprising an operating command and program identification information including at least one of a first type of program identification information and a second type of program identification information;

'processing said electronic mail message to determine whether said electronic mail message includes said first type of program identification information;

'scheduling an event responsive to said operating command for a program identified by said program identification information without searching program guide information for said program if said electronic mail message includes said first type of program identification information;

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'continuing to process said electronic mail message to determine whether said electronic mail message includes said second type of program identification information only if said electronic mail message does not include said first type of program identification information;

'searching said program guide information for said program using said program identification information only if said electronic mail message includes said second type of program identification information and does not include said first type of program identification information;
and

'scheduling said event responsive to said operating command if said program is found during said searching step." (emphasis added)

As indicated above, independent claim 10 defines a method for scheduling an event (e.g., program recording, etc.) responsive to a received electronic mail message that includes an operating command and at least one of two different types of program identification information (e.g., channel/time information and/or a program name). The received electronic mail message is processed to determine whether it includes the first type of program identification information. An event is scheduled responsive to the operating command for a program identified by the program identification information without searching program guide information for the program if the electronic mail message includes the first type of program identification information.

Also according to the method, the electronic mail message continues to be processed to determine whether it includes the second type of program identification information only if the electronic mail message does not include the first type of program identification information. The program guide information is then searched for the program using the program identification information only if the electronic mail message includes the second type of program identification information and does not include the first type of program identification information. An event is scheduled responsive to the operating command if the program is found during the search of the program guide information. Independent claims 17 and 24 define subject matter similar to Independent claim 1, but are written in "apparatus" format.

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In the aforementioned manner, the claimed invention defines a method and apparatus for scheduling an event (e.g., program recording, etc.) responsive to a received electronic mail message that advantageously provides enhanced performance and versatility by being able to schedule the event in response to at least two different types of program identification information (e.g., channel/time information and/or a program name).

A. The Proposed Combination Of References Fails To Teach Or Suggest All Elements Of The Claimed Invention

Appellants submit that neither Hirata, Westlake nor Berry, whether taken individually or in combination, teaches or suggests all of the foregoing elements of independent claims 10, 17 and 24 (and their respective dependent claims). On page 4 of the final Office Action dated December 18, 2008, the Examiner admits:

"Hirata fails to disclose... searching said program guide information for said program using said program identification information only if said electronic mail message includes said second type of program identification information and does not include said first type of program identification information ...".

As indicated above, the Examiner admits that the primary reference, Hirata, fails to disclose, *inter alia*, the claimed "searching said program guide information...." element of independent claims 10, 17 and 24. In an attempt to remedy this admitted deficiency of Hirata, the Examiner relies on Westlake (again, see page 4 of the final Office Action dated December 18, 2008).

In response, Appellants submit that Westlake is unable to remedy the aforementioned admitted deficiency of Hirata. In particular, Westlake teaches a method that includes steps of receiving an electronic message and comparing terms in the received electronic message to terms in the program information of an electronic program guide (EPG) (see, for example, page 23, lines 14-28 and steps S1-S2 of FIG. 3). However, this comparison step of Westlake is ostensibly performed for all terms included in the received electronic message without regard to whether certain

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information is included or not included in the received electronic message. In other words, Westlake does not teach or suggest, *inter alia*, the conditional language included in the claimed step of "searching said program guide information for said program using said program identification information only if said electronic mail message includes said second type of program identification information and **does not include** said first type of program identification information" (emphasis added) because Westlake never determines if the electronic message "does not include said first type of program identification information" as claimed, but simply compares all terms included in the received electronic message to terms in the program information of an electronic program guide (EPG). As such, Westlake is unable to remedy an admitted deficiency of Hirata. Berry is likewise unable to remedy this admitted deficiency of Hirata (the Examiner does not even allege that it can). Accordingly, the proposed combination of references, whether taken individually or in combination, fails to teach or suggest, *inter alia*, the claimed step of: "searching said program guide information for said program using said program identification information only if said electronic mail message includes said second type of program identification information and does not include said first type of program identification information" (see, for example, claim 10). For this reason alone, Appellants submit that the instant rejection should be reversed.

B. There Is No "Apparent Reason" To Combine The References In The Proposed Manner

On page 5 of the Final Office Action dated December 18, 2008, the Examiner further admits:

"Hirata and Westlake fail to disclose continuing to process the electronic mail message only if the first type of program identification information is not included." (emphasis added)

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As indicated above, the Examiner admits that the proposed combination of Hirata and Westlake fails to disclose the claimed "continuing to process...." element of independent claims 10, 17 and 24. The Examiner attempts to remedy this admitted deficiency of the Hirata/Westlake combination by relying on Berry. In particular, on pages 5-6 of the final Office Action dated December 18, 2008, the Examiner alleges:

"... Berry teaches performing a searching operation, where a search is first performed on a first type of information, and only broadens the search for a second type of information if a match is not found in the first search, providing the benefit of improved speed by avoiding unnecessary searching (wherein a first type of words are highly specific and are located quickly, whereas a second type of words are less specific and require more processor intensive searching, therefore the type 1 words are given priority, and additional searching is done if a type 1 word is not found." (citing column 4, lines 3-9 and column 5, line 36 to column 6, line 19)

The Examiner's alleged reason for combining the teachings of Berry to the combination of Hirata and Westlake is as follows:

"It would have been obvious at the time to a person of ordinary skill in the art to perform additional searching only if a match is not found in the first search, as taught by Berry, for the benefit of avoiding unnecessary searching, which streamlines the searching for improved efficiency." (emphasis added)

In response, Appellants submit that there is no "apparent reason" that one of ordinary skill in the art would combine the teachings of Berry to the combination of Hirata and Westlake, as proposed (see *KSR Int'l v. Teleflex, Inc.*, 127 S. Ct. 1727, 1740-41 (2007)). In particular, combining the teachings of Berry to the combination of Hirata and Westlake, as proposed, would defeat one of the primary objectives of Westlake, namely the ability to distinguish those terms in an electronic message which have a match in the program information of an electronic program guide (EPG) from terms which have no such match (see, for example, the Abstract of Westlake).

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As indicated above herein, Westlake teaches a method that compares all terms in a received electronic message to terms in the program information of an electronic program guide (EPG), without regard to whether certain information is included or not included in the received electronic message (see, for example, page 23, lines 14-28 and steps S1-S2 of FIG. 3). By performing the comparison in this manner, Westlake is readily able to fulfill his primary objective of distinguishing those terms in the electronic message which have a match in the program information of the electronic program guide (EPG) from terms which have no such match.

However, by modifying the combination of Hirata and Westlake using the teachings of Berry, as proposed, Westlake would inherently have to restrict or limit his comparison method based on the content of the received electronic message. That is, by modifying the combination of Hirata and Westlake using the teachings of Berry, as proposed, Westlake would "[continue to] process said electronic mail message to determine whether said electronic mail message includes said second type of program identification information only if said electronic mail message does not include said first type of program identification information" (emphasis added). By restricting his comparison method based on the content of the received electronic message in this manner, Westlake would inherently yield incomplete comparison results, and thereby fail to achieve one of his primary objectives since he would only continue to process a received electronic message if said message did not include a certain type of information.

Accordingly, since combining the references in the proposed manner would defeat one of the primary objectives of the Hirata/Westlake combination, Appellants submit that there is no "apparent reason" for one skilled in the art to combine the references in the proposed manner (again, see *KSR Int'l v. Teleflex, Inc.*, 127 S. Ct. 1727, 1740-41 (2007)).

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C. The Berry Reference Constitutes "Non-Analogous Art" Under Federal Circuit Law

Appellants further submit that Berry constitutes "non-analogous art" under the law of the Federal Circuit, and therefore has no legal bearing on the determination of obviousness under 35 U.S.C. §103 in this case.

The determination of whether a prior art reference is analogous or not is based on a two-step test. In particular, under the two-step test for determining whether a prior art reference is non-analogous and thus not relevant in determining obviousness, it must be determined (1) whether the reference is "within the field of the inventor's endeavor," and (2) if not, whether the reference is "reasonably pertinent to the particular problem with which the inventor was involved." See, for example, *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986).

With respect to step (1), the Berry reference endeavors to provide a method of indexing keywords for searching in a database recorded on a CD-ROM, with the objective of improving the time requirement for accessing data (see, for example, column 1, line 7 to column 2, line 66). In contrast, the claimed invention endeavors to provide a method and apparatus for scheduling an event (e.g., program recording, etc.) responsive to a received electronic mail message that advantageously provides enhanced performance and versatility by being able to schedule the event in response to at least two different types of program identification information (e.g., channel/time information and/or a program name). Accordingly, Berry is clearly not "within the field of the inventor's endeavor", and therefore fails step (1) of the two-step test.

Next, with respect to step (2), one of ordinary skill in the art would not likely even consider looking at prior art such as Berry related to indexing keywords for searching in a database recorded on a CD-ROM, with the objective of improving the time requirement for accessing data when confronted with the problem of how to provide a method and apparatus capable of scheduling an event (e.g., program recording, etc.) responsive to a received electronic mail message that advantageously provides enhanced performance and versatility by being able to schedule the event in response to at least two different types of program identification information (e.g., channel/time

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information and/or a program name) as claimed. Accordingly, the Berry reference is clearly not "reasonably pertinent to the particular problem with which the inventor was involved" and therefore also fails step (2) of the two-step test.

Accordingly, Appellants submit that Berry constitutes "non-analogous art" under the law of the Federal Circuit, and therefore has no legal bearing on the determination of obviousness under 35 U.S.C. §103 in this case.

D. Conclusion

As explained above, the proposed combination of Hirata, Westlake and Berry fails to teach or suggest all of the elements of independent claims 10, 17 and 24 (and their respective dependent claims). Moreover, there is no "apparent reason" for one skilled in the art to combine the references in the proposed manner, as required by *KSR Int'l v. Teleflex, Inc.*, since doing so would inherently defeat one of Westlake's primary objectives. Additionally, Berry is non-analogous art and should not be considered relevant in determining obviousness under 35 U.S.C. §103 in this case. Accordingly, for at least the foregoing reasons, Appellants respectfully request that the Board reverse the rejection of claims 10-29, and pass this application to issue.

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VIII. Claims Appendix

10. A method for operating a video processing apparatus, comprising steps of:

receiving an electronic mail message remotely from a user, said electronic mail message comprising an operating command and program identification information including at least one of a first type of program identification information and a second type of program identification information;

processing said electronic mail message to determine whether said electronic mail message includes said first type of program identification information;

scheduling an event responsive to said operating command for a program identified by said program identification information without searching program guide information for said program if said electronic mail message includes said first type of program identification information;

continuing to process said electronic mail message to determine whether said electronic mail message includes said second type of program identification information only if said electronic mail message does not include said first type of program identification information;

searching said program guide information for said program using said program identification information only if said electronic mail message includes said second type of program identification information and does not include said first type of program identification information; and

scheduling said event responsive to said operating command if said program is found during said searching step.

11. The method of claim 10, wherein:

said first type of program identification information includes channel and time information for said program; and

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said second type of program identification information includes a name of said program.

12. The method of claim 10, wherein said operating command represents one of a request to record said program and a request to watch said program.

13. The method of claim 12, wherein:
said video processing apparatus is scheduled to record said program if said operating command represents said request to record said program; and
said video processing apparatus is scheduled to power on if said operating command represents said request to watch said program.

14. The method of claim 10, further comprising a step of sending a second electronic mail message from said video processing apparatus to said user if said program is not found during said searching step, said second electronic mail message indicating that said electronic mail message included insufficient program identification information.

15. The method of claim 10, wherein said electronic mail message further comprises a password and further comprising a step of sending a second electronic mail message from said video processing apparatus to said user if said password is incorrect.

16. The method of claim 10, further comprising of a step of sending a second electronic mail message from said video processing apparatus to said user if said event is scheduled.

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17. An apparatus, comprising:

first means for receiving an electronic mail message remotely from a user, said electronic mail message comprising an operating command and program identification information including at least one of a first type of program identification information and a second type of program identification information;

second means for processing said electronic mail message to determine whether said electronic mail message includes said first type of program identification information, and for scheduling an event responsive to said operating command for a program identified by said program identification information without searching program guide information for said program if said electronic mail message includes said first type of program identification information;

said second means continuing to process said electronic mail message to determine whether said electronic mail message includes said second type of program identification information only if said electronic mail message does not include said first type of program identification information; and

said second means searching said program guide information for said program using said program identification information only if said electronic mail message includes said second type of program identification information and does not include said first type of program identification information, and scheduling said event responsive to said operating command if said program is found during said searching.

18. The apparatus of claim 17, wherein:

said first type of program identification information includes channel and time information for said program; and

said second type of program identification information includes a name of said program.

19. The apparatus of claim 17, wherein said operating command represents one of a request to record said program and a request to watch said program.

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20. The apparatus of claim 19, wherein:

said apparatus is scheduled to record said program if said operating command represents said request to record said program; and

said apparatus is scheduled to power on if said operating command represents said request to watch said program.

21. The apparatus of claim 17, wherein a second electronic mail message is sent from said apparatus to said user if said program is not found during said searching, said second electronic mail message indicating that said electronic mail message included insufficient program identification information.

22. The apparatus of claim 17, wherein said electronic mail message further comprises a password and a second electronic mail message is sent from said apparatus to said user if said password is incorrect.

23. The apparatus of claim 17, wherein a second electronic mail message is sent from said apparatus to said user if said event is scheduled.

24. A video processing apparatus, comprising:

an interface operative to receive an electronic mail message remotely from a user, said electronic mail message comprising an operating command and program identification information including at least one of a first type of program identification information and a second type of program identification information;

a processor operative to process said electronic mail message to determine whether said electronic mail message includes said first type of program identification information, and to schedule an event responsive to said operating command for a program identified by said program identification information without searching program guide information for said program if said electronic mail message includes said first type of program identification information;

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said processor continuing to process said electronic mail message to determine whether said electronic mail message includes said second type of program identification information only if said electronic mail message does not include said first type of program identification information; and

said processor searching said program guide information for said program using said program identification information only if said electronic mail message includes said second type of program identification information and does not includes said first type of program identification information, and scheduling said event responsive to said operating command if said program is found during said searching.

25. The video processing apparatus of claim 24, wherein:

said first type of program identification information includes channel and time information for said program; and

said second type of program identification information includes a name of said program.

26. The video processing apparatus of claim 24, wherein said operating command represents one of a request to record said program and a request to watch said program.

27. The video processing apparatus of claim 26, wherein:

said video processing apparatus is scheduled to record said program if said operating command represents said request to record said program; and

said video processing apparatus is scheduled to power on if said operating command represents said request to watch said program.

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28. The video processing apparatus of claim 24, wherein a second electronic mail message is sent from said video processing apparatus to said user if said program is not found during said searching, said second electronic mail message indicating that said electronic mail message included insufficient program identification information.

29. The video processing apparatus of claim 24, wherein said electronic mail message further comprises a password and a second electronic mail message is sent from said video processing apparatus to said user if said password is incorrect.

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IX. Evidence Appendix

None.

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X. Related Proceedings Appendix

None.

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Respectfully submitted,

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